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FESSENDEN, TIMOTHY E

ROMAN CATHOLIC DIOCESE OF ROCHESTER

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
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ADAM J BELLO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

TIMOTHY E. FESSENDEN

Plaintiff,

v.

ROMAN CATHOLIC DIOCESE OF ROCHESTER

Defendant.

VERIFIED COMPLAINT
JURY TRIAL DEMANDED

Index No: _____

Plaintiff Timothy E. Fessenden ("Plaintiff"), by and through his attorneys, Morgenstern DeVoesick PLLC and Andreozzi & Associates, P.C., as and for their Complaint in this matter against defendant Roman Catholic Diocese of Rochester ("Defendant"), hereby alleges as follows:

Nature of the Action

1. Plaintiff bring this action against Defendant pursuant to New York's Child Victims Act ("CVA") (N.Y. C.P.L.R. § 214-g).

Parties

2. Defendant Roman Catholic Diocese of Rochester ("Diocese" or "Rochester Diocese") is religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office located at 1150 Buffalo Road, Rochester, New York, 14624, in Monroe County, New York.

3. The Rochester Diocese serves 12 New York State counties with 7 Deaneries and a Catholic population of more than 360,000 people across Monroe, Wayne, Livingston, Steuben, Ontario, Seneca, Cayuga, Tompkins, Schuyler, Chemung, Tioga, and Yates Counties.

4. At all relevant times, the Rochester Diocese created, oversaw, managed, controlled, directed and operated parishes and/or churches of the Diocese.

5. At all relevant times, the Rochester Diocese oversaw, managed, controlled, and directed all priests assigned to work in parishes and/or churches of the Diocese, including Father John Gormley.

6. Plaintiff Timothy E. Fessenden is an adult resident of New York.

Jurisdiction and Venue

7. This Court has personal jurisdiction over the Defendant pursuant to N.Y. C.P.L.R. § 301 and § 302.

8. This Court, as a court of general jurisdiction, has subject matter jurisdiction over this action.

9. Venue in the County of Monroe is proper pursuant to CPLR § 503 because the Defendant Diocese resides and/or does business in this County.

Facts

Sexual Abuse in the Rochester Diocese and by Father John Gormley

10. As is now well-known, child sex abuse by Catholic priests was widespread, resulting in major sex abuse scandals involving Catholic Dioceses around the world, including those in Boston, Los Angeles, Philadelphia, and many other cities.

11. For many years, however, the scope of the Catholic child sex-abuse epidemic was unknown.

12. Thanks to an investigation in 2002 by the Boston Globe's "Spotlight" team, made more famous by the 2015 film *Spotlight*, the public is now aware that thousands of children have been sexually abused by Catholic priests, and that many of those predator priests were protected by Catholic officials.

13. The Rochester Diocese was no different.

14. Throughout the history of the Rochester Diocese, at least 35 clerics associated with the Diocese have been accused of sexual misconduct and/or abuse.

15. The Rochester Diocese has thus been aware of the risk of sexual abuse by its clerics for decades, well before the sexual abuse of the Plaintiff, which is described herein.

16. Sexual abuse by Diocesan clergy was a known, preventable hazard, which the Diocese failed to respond to.

17. One of the Diocese's worst priest-offenders, and the Plaintiff's abuser, was Rochester Diocesan priest John Gormley ("Gormley").

18. Gormley was ordained as a Rochester Diocesan priest in 1959.

19. Thereafter, Gormley served in several Rochester Diocese parishes, including:

- a. Most Holy Redeemer in Rochester, NY from 1959 or 1960 – 1962 or 63;
- b. St. Mary's in Corning, NY from 1962 or 63 – 1965 or 66;
- c. St. Mary of the Lake Church in Watkins Glen, NY from 1965 or 66 – 1967 or 1968; and,
- d. Galilee House in Cayuga, NY in 1967 and/or 1968.

20. Gormley was placed on a leave of absence in 1969 and left the priesthood in 1971.

21. Prior to abusing the Plaintiff, Gormley had already begun sexually abusing children.

22. The Diocese was are of Gormley's abuse of children; his "compulsion" well before he abused the Plaintiff.

23. In 1957, two years before Gormley was ordained, Gormley informed his seminary in Rochester that Gormley feared he was unfit for the priesthood due to Gormley's sexual compulsivity.

24. Still, in 1959, Gormley was ordained and sent to Most Holy Redeemer, where he began to sexually abuse children, which the Diocese also became aware of.

25. Thereafter, Gormley was transferred to St. Mary's in Corning, NY.

26. While in Corning, Gormley discussed his "compulsion" with the senior pastor.

27. Indeed, throughout Gormley's time as a priest, he routinely informed other clergy of his sexual issues.

28. Gormley also informed the Diocese he was seeing a psychiatrist to deal with his compulsive sexual misconduct with children.

29. Despite the Diocese's knowledge regarding Gormley, the Diocese transferred Gormley to St. Mary of the Lake Church in Watkins Glen.

30. Thereafter, from roughly 1965 to 1967 or 1968, Gormley sexually abused the Plaintiff on multiple occasions; typically, the abuse involved fondling and masturbation.

31. In a letter dated February 4, 1994, Gormley admitted to abusing the Plaintiff, and notified Plaintiff's entire family that he had done so.

32. Gormley's 1994 letter was addressed to Plaintiff's parents, plus fourteen of Plaintiff's other family members.

33. To that point, Plaintiff had kept his abuse a secret from his loved ones and was utterly devastated by Gormley's disclosure.

34. In Gormley's letter he wrote:

There are some other things I want to say, following the disclosure to you last week of the, I believe, three incidences of inappropriate, night-time touching, years ago when I was a priest, perpetrated against Tim when he was a youngster of about 8 or 9 and an innocent, unsuspecting, perplexed victim of that insane behavior of mine which stemmed from the deep pathology I was laboring under at the time.

35. Gormley also admitted in his 1994 letter that the Rochester Diocese knew of his abusive conduct (his "disorder") yet did not adequately help him.

36. Gormley wrote in the letter:

If Tim should choose to want to get some appropriate professional counseling for this matter, I would suggest that you consider a strong request (demand) made directly to the Diocese of Rochester, through Bishop Matthew Clark, 1150 Buffalo Road, Rochester, perhaps with the assistance of Father Ryan, for suitable financial aid for the counseling required, as has been the procedure in similar situations in other dioceses. I mention this first, because diocesan personnel were aware of this disorder of mine at the time of the incidents against Tim, through my own acknowledgment to them of the problem and the seeking of appropriate help for myself and for those affected, and continued to employ me without affording me that help or providing those affected by these behaviors with appropriate support and help for themselves.

37. As is reflected in Gormley's letter and otherwise herein, like other Catholic dioceses, the Rochester Diocese transferred Gormley to protect Gormley and the Diocese instead of the children of the Diocese, including the Plaintiff.

38. At no time did the Rochester Diocese make Plaintiff or his family aware of Gormley's history, or of the known risk of abuse posed by him and other Catholic clergy.

39. Such acts by the Rochester Diocese were willful, wanton, and/or reckless.

40. As described below, Gormley sexually abused the Plaintiff, in addition to numerous other children, which Gormley has admitted.

41. As a direct result of the Defendant's conduct described herein, Plaintiff suffered and will continue to suffer as follows:

- a. Severe and permanent emotional distress, including physical manifestations of emotional distress;

- b. Deprivation of the full enjoyment of life;
- c. Expenses for medical and psychological treatment, therapy, and counseling;
and,
- d. Loss of income and/or loss of earning capacity.

Causes of Action

First Cause of Action

Negligent Hiring, Negligent Retention, Negligent Supervision

42. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

43. Defendant owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Gormley in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer of the Defendant.

44. Defendant owed a duty of care to all minor persons, including Plaintiff, to insure Gormley did not use his position to injure minors by sexual assault, abuse, and/or sexual contact.

45. Defendant had an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for them.

46. Defendant negligently hired, retained, and supervised Gormley though they knew or should have known that Gormley posed a threat of harm to minors.

47. Defendant knew or should have known of Gormley's propensity for sexual assault, abuse, and/or sexual contact with minors, the same conduct which caused Plaintiff's injuries.

48. Defendant knew or should have known of Gormley's propensity for sexual assault, abuse, and/or sexual contact with minors prior to, or at the time of, Plaintiff's injuries.

49. The Plaintiff's sexual abuse by Gormley was foreseeable, *i.e.*, Defendant were on notice of prior similar incidents and Plaintiff's sexual abuse was the proximate result of Defendant's negligent hiring, retention, and supervision of Gormley.

50. Gormley's acts described herein were undertaken, and/or enabled by, and/or during the course, and/or within the scope of Gormley's employment, appointment, assignment, and/or agency with Defendant.

51. Defendant took no precautions to prevent Plaintiff's injuries.

52. Defendant failed to take reasonable precautions to prevent Plaintiff's injuries.

53. Defendant gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others.

54. Defendant failed adequately to supervise the activities of Gormley.

55. Defendant failed to protect against or warn the Plaintiff or their families of the known risk of priest abuse within the Diocese.

56. Defendant permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control.

57. Defendant allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

58. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

59. As a direct and proximate result of Defendant's actions and omissions, Plaintiff suffered and will continue to suffer injuries, as described herein.

60. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Second Cause of Action
Negligence/Gross Negligence/Recklessness**

61. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

62. Defendant owed Plaintiff, minors at the relevant times of abuse, a duty to protect them from Gormley and the consequential damages, both prior to and/or subsequent to Gormley's misconduct.

63. Defendant knew, should have known, or were negligent in not knowing, of Gormley's propensity for sexual assault, abuse, and/or sexual contact with minors and that Gormley posed a threat of sexual abuse to children.

64. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

65. As a direct and proximate result of Defendant's actions and omissions, Plaintiff suffered and will continue to suffer injuries, as described herein.

66. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Third Cause of Action
Breach of Non-Delegable Duty**

67. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

68. Plaintiff, as a vulnerable minor, was in the care and under the supervision of the Defendant.

69. There existed a non-delegable duty of trust and protection between Plaintiff and the Defendant.

70. Defendant was in the best position to prevent Plaintiff's abuse by Diocesan priests, including Gormley, who was under the supervision, employ, direction and/or control of the Defendant.

71. Defendant breached their non-delegable duty to Plaintiff.

72. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

73. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Fourth Cause of Action
Breach of Fiduciary Duty**

74. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

75. At all times relevant, there existed a fiduciary relationship of trust, confidence, and reliance between Defendant and Plaintiff that required the Defendant to act in Plaintiff's best interests.

76. Defendant breached their fiduciary relationship with Plaintiff.

77. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

78. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Fifth Cause of Action
Negligent Infliction of Emotional Distress**

79. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

80. Plaintiff, as a vulnerable minor, was in the care and under the supervision of the Defendant, and thus Defendant owed Plaintiff a duty of care.

81. By reason of the foregoing, Defendant breached that duty of care.

82. Defendant unreasonably endangered the Plaintiff's physical safety, and/or caused the Plaintiff to fear for his own safety.

83. As a direct result of Defendant conduct heretofore described, Plaintiff suffered severe emotional harm and distress, as described herein.

84. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

85. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Sixth Causes of Action
Intentional Infliction of Emotional Distress**

86. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

87. Defendant's conduct, as heretofore described, was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

88. Defendant intended to cause, or disregarded a substantial probability of causing, severe emotional distress in Plaintiff.

89. Defendant willful, wanton, and/or reckless conduct caused the Plaintiff severe emotional distress.

90. As a direct result of Defendant's conduct heretofore described, Plaintiff suffered severe emotional harm and distress, as described herein.

91. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Seventh Cause of Action
Breach of Duty in Loco Parentis**

92. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint.

93. At all times relevant, the Plaintiff was entrusted to the control of the Defendant.

94. At all relevant times, Defendant was acting in loco parentis with respect to Plaintiff.

95. The Defendant owed a duty to Plaintiff, as a child entrusted to them, to act in loco parentis and prevent foreseeable injuries to them.

96. Defendant's conduct, as heretofore described, violated its duties in loco parentis.

97. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

98. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Eighth Cause of Action
Nuisance**

99. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint.

100. Defendant continues to conspire and engage and/or has conspired and engaged in efforts to: 1) conceal sexual abuse committed by Defendant's agents against children; and/or 2) protect Defendants' agents from prosecution for their sexual abuse of children; 3) conceal from the public the known dangers posed by its agents; and/or 4) allow known child abusers to live freely in the community unknown to the public.

101. The conduct, deception and concealment by Defendant has knowingly and/or recklessly created and/or maintained a condition which unreasonably endangers the safety and health of a considerable number of persons, including, but not limited to, children and residents in the Diocese of Rochester and other members of the general public.

102. Defendant's failure to report multiple allegations of sexual assault and abuse of children to proper authorities knowingly and/or recklessly endangered the safety and health of a considerable number of persons by allowing child molesters to avoid prosecution and remain living freely in unsuspecting communities.

103. These child molesters, known to the Diocese but not to the public, pose(d) a threat of additional abuse to a considerable number of members of the public and Plaintiff.

104. Defendant's deception and concealment of sexually abusive clerics was and continues to be done with full awareness and conscious disregard of the injurious conditions

created and the corresponding risk to the public and individuals in the communities where credibly accused molesters are present, including, but not limited to Plaintiff.

105. It offends the public morals in that the general public and Plaintiff cannot trust Defendant to warn parents of the presence of the current and/or former credibly accused molesters, nor to identify their current and/or former credibly accused molesters, nor to disclose said credibly accused molesters' assignment histories, nor to disclose their patterns of conduct in grooming and sexually assaulting children, all of which create an impairment of the safety and welfare of children in the neighborhoods where Defendant conducted, and continues to conduct, its business.

106. The unreasonable, knowing and reckless conduct, deception and concealment by Defendant was and continues to be especially injurious to Plaintiff's health as Plaintiff was sexually abused by Defendant's agent.

107. The unreasonable, knowing and reckless conduct, nuisance, deception and concealment by Defendant was especially injurious to Plaintiff's health and wellbeing.

108. Plaintiff suffered and continues to suffer particular and peculiar harm as a result of the Diocese's knowing and reckless concealment of clerics credibly accused of sexually molesting minors.

109. Defendant acted unreasonably by knowingly and/or recklessly creating or maintaining a condition which endangered the safety or health of a considerable number of persons with a conscious disregard for Plaintiff's rights.

110. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

JURY DEMAND

111. Plaintiff demand a trial by jury on all issues so triable.

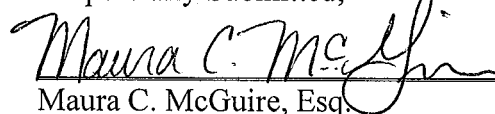
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WHEREFORE Plaintiff demands judgment against the Defendant on each cause of action as follows:

- a) Awarding compensatory damages in an amount to be proved at trial, in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- b) Awarding punitive damages to the extent permitted by law;
- c) Awarding prejudgment interest to the extent permitted by law;
- d) Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- e) Awarding such other and further relief as to this Court may seem just and proper.

Dated: August 14, 2018
Rochester, New York

Respectfully Submitted,



Maura C. McGuire, Esq.

mmcguire@morgdevo.com

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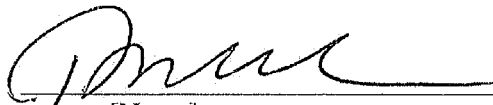
(NY Admission Pending)

Attorneys for Plaintiff

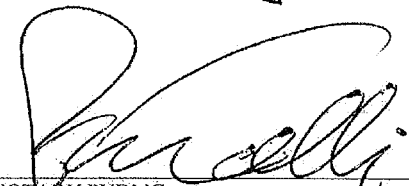
VERIFICATION

STATE OF N.Y.)COUNTY OF Cayuga) SS:

Timothy E. Fessenden being duly sworn, deposes and says: That he is a plaintiff in this action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, deponent believes it to be true.


[Name]

Sworn to before me this
12 day of August 2019.


NOTARY PUBLIC

PAUL N. TAVELLI
Notary Public, State of New York
No. 55-3936410
Qualified in Tompkins County
Term Expires 11-30-22